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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re JONATHAN L., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,
Plaintiff and Respondent,
v.
JONATHAN L.,
Defendant and Appellant.

A143437

(Contra Costa County
Super. Ct. No. J07-01890)

Appellant challenges two conditions of his probation that he may not (1) possess deadly or dangerous weapons or (2) participate in gang activity or go to areas known for gang-related activity. Appellant argues both conditions are unconstitutionally vague and overbroad, and therefore must be modified. He also argues the trial court improperly calculated his predisposition and precommitment credits. We find the probation conditions are proper, but the court erred in calculating appellant's credits.

I. BACKGROUND

Appellant was arrested following an incident in which he threatened his girlfriend with a loaded shotgun and fled from the police. On June 3, 2014, the Contra Costa County District Attorney filed an original juvenile wardship petition charging appellant with four counts: (1) possession of a loaded firearm (Pen. Code,¹ § 25850, subds. (a),

¹ All statutory citations are to the Penal Code unless otherwise specified.

(c)(4)); (2) possession of ammunition by a minor (§ 29650); (3) possession of a firearm by a minor (§ 29610); and (4) resisting a peace officer (§ 148, subd. (a)(1)). Appellant pleaded no contest to the third count in exchange for dismissal of the remaining counts.

At the dispositional hearing, the trial court ordered appellant to participate in a youth offender treatment program (YOTP) for a period of not more than three years. The trial court also imposed various probation conditions, two of which are at issue on appeal. The first contested condition states the minor shall “Not use [or] possess deadly or dangerous weapons.” The second condition states: “The minor shall not participate in any gang activity and shall not visit or remain in any specific location known by the minor to be, or that the [deputy probation officer] informs the minor to be, an area of gang-related activity.”

II. DISCUSSION

Appellant contends both probation conditions are unconstitutionally vague and overbroad. In addition, he contends the trial court erred in calculating his predisposition and precommitment credits. The constitutional challenge to the probation conditions raises an issue of law, which we review de novo. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.) The trial court’s decisions regarding confinement are reviewed for an abuse of discretion, with the understanding appellant is entitled to credit against his term of confinement for time spent in custody before the disposition hearing. (*In re Emilio C.* (2004) 116 Cal.App.4th 1058, 1067.) We conclude the probation conditions were proper, but the trial court erroneously calculated appellant’s predisposition credits.

A. Probation Conditions

A probation condition is unconstitutionally overbroad if it impinges upon a probationer’s constitutional rights and is not carefully tailored and reasonably related to a compelling state interest in reformation and rehabilitation. (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) However, perfecting the balance between the condition’s legitimate purpose and the burden it imposes on the probationer’s constitutional rights is impossible. (*Ibid.*) Thus, “practical necessity will justify some infringement.” (*Ibid.*) A probation condition is unconstitutionally vague if it is not “ ‘sufficiently precise for the

probationer to know what is required of him, and for the court to determine whether the condition has been violated.’ ” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) In other words, a probation condition must provide “ ‘fair warning’ ” of the prohibited conduct to the potential offender in order to prevent arbitrary enforcement. (*Ibid.*)

Unconstitutionally vague probation conditions may often be cured by requiring the probationer to know a particular association, place, or item is within a prohibited category. (See *In re Sheena K.*, *supra*, 40 Cal.4th at p. 892.) For example, a vague condition prohibiting gang associations may be modified to forbid association with any person known to the probationer to be a gang member. (*Ibid.*) However, not every category condition is vague merely because it does not require the probationer to know a particular association, place, or item is within the prohibited category. A probation condition passes constitutional muster so long as it spells out with reasonable specificity what is prohibited in such a way that persons of common intelligence need not guess at its meaning or differ as to its application. (*Id.* at p. 890.) Thus, it is unnecessary to require a probationer to know that something falls within a prohibited category when the category is essentially clear.

It is also important to distinguish between the knowledge requirement used to make a vague category more precise and mens rea principles. Willfulness is the mens rea that is implicitly required for a probation violation. (*People v. Cervantes* (2009) 175 Cal.App.4th 291, 295.) Put another way, probation may not be revoked unless the evidence shows the probationer’s conduct constituted a willful violation of the terms of his or her probation. (*Ibid.*) Thus, sentencing courts need not include a requirement that a probationer knowingly violated a condition in order to protect against enforcement of unwitting violations. Moreover, expressly adding a mens rea requirement to a probation condition may not clarify the ambiguity at issue. If reasonable probationers can be confused about what falls within a prohibited category, informing them they cannot knowingly engage in conduct related to that category may still not explain clearly what they are supposed to avoid.

With these principles in mind, we turn to the specific probation conditions at issue here.

1. *The Weapons Condition*

The first condition at issue states appellant shall not use or possess deadly or dangerous weapons. Appellant argues the weapons condition is improper because (1) the term “deadly or dangerous weapons” is overbroad and vague, and (2) the condition does not include an express knowledge requirement. We are not persuaded.

As to appellant’s contention regarding the term “deadly and dangerous weapons,” the Second Appellate District rejected a similar challenge in *In re R.P.* (2009) 176 Cal.App.4th 562. After surveying statutory authority, case law, jury instructions, and Black’s Law Dictionary, the court concluded the phrase “dangerous or deadly weapon” is clearly established by law and is “ ‘a matter of common knowledge and everyday experience.’ ” (*In re R.P.*, at pp. 568, 569.) The court noted “legal definitions of ‘deadly or dangerous weapon,’ ‘deadly weapon,’ ‘dangerous weapon,’ and use in a ‘dangerous or deadly’ manner consistently include the harmful capability of the item and the intent of its user to inflict, or threaten to inflict, great bodily injury.” (*Id.* at p. 568.) Accordingly, the court held the probation condition proscribing “deadly or dangerous weapons” was sufficiently precise, and thus, constitutional. (*Ibid.*) We agree with the Second District’s sound rationale and therefore hold the term “deadly or dangerous weapon” is neither unconstitutionally vague nor overbroad.

Appellant’s contention that the weapons condition should include an express knowledge requirement is also unavailing, as it conflates the issues of vagueness and mens rea. As discussed above, all probation conditions implicitly include a mens rea requirement. Accordingly, regardless of how the probation condition is worded, appellant cannot be held in violation for carrying a deadly and dangerous weapon if he does so without knowledge of its presence. Hence, there is no need to modify the condition to add an explicit knowledge requirement.

2. The Gang Condition

The next probation condition challenged by appellant states he “shall not participate in any gang activity and shall not visit or remain in any specific location known by the minor to be, or that the [deputy probation officer] informs the minor to be, an area of gang-related activity.” Appellant contends this gang condition is improper because (1) it does not reference a specific gang and does not contain a scienter requirement, and (2) it does not define the term gang activity.

Appellant’s first contention—that the condition is improper because it does not reference a specific gang—is unpersuasive. The purpose of the gang-related probation condition is to steer the appellant entirely away from all gang influence, leaving no loopholes for maintaining his gang ties. (See *In re Victor L.* (2010) 182 Cal.App.4th 902, 915 (*Victor L.*)). If we were to limit the condition to a particular gang, appellant would be free to join any other gang of his choosing. This would be entirely counterproductive with regard to the state’s interest in rehabilitation.

Appellant also contends that absent a reference to a specific gang, the condition is unconstitutionally vague, since he is not aware of every gang’s membership roster and consequently may inadvertently associate with gang members. Appellant asserts this unnecessarily infringes upon his First Amendment rights to association, expression, and movement. But the condition at issue does not proscribe association with gang members. It merely prohibits appellant from participating in or going to areas of gang-related activity. Another condition of appellant’s probation does prohibit appellant from associating with gang members. But that condition includes an express knowledge requirement. Specifically, it states: “The minor shall not associate with anyone known to the minor to be a gang member or associate with a gang, or anyone who the [deputy probation officer] informs the minor to be, a gang member or associated with a gang.” Thus, there is no basis for appellant’s assertion that he could be held in violation of his probation for associating with persons who, unbeknownst to him, are gang members.

Appellant’s next contention, that the term “gang activity” is overbroad and vague, is also unpersuasive. To support his argument, appellant relies on *Victor L.*, *supra*,

182 Cal.App.4th 902. In that case, one of the probation conditions at issue ordered the minor to stay away from areas known by the minor for gang-related activity. (*Id.* at p. 913.) The minor argued that because gang members “might mail a letter at the post office ‘for the benefit’ of a street gang, or might purchase groceries ‘in association’ with other gang members,” he might be guilty of violating probation “simply by shopping at the same grocery store or using the same post office that other gang members patronize.” (*Id.* at p. 915.) While finding such an interpretation was unreasonable, the court determined the term “gang-related activity” was ambiguous and “reasonable minds may differ as to precisely which ‘areas’ would come within the condition’s purview.” (*Id.* at pp. 915–916.) The court was concerned the literal language commanded the minor to stay away from “parts of town where any criminal street gangs thrive, even if he does not associate with members of any gang there.” (*Id.* at p. 916.)

The court held specification based on geographic or activity-based limits would make the condition “clear enough to avoid a vagueness challenge and narrow enough to escape a claim of overbreadth,” but left it to the probation officer to consider which approach would best serve the minor. (*Victor L.*, *supra*, 182 Cal.App.4th at p. 918.) The probation condition was modified to state: “ ‘The Minor shall not be in any areas where gang members are known by Minor to meet or get together, or areas known by Minor for gang-related activity (*or specified by his probation officer as involving gang-related activity*), nor *shall he* participate in any gang activity.’ ” (*Id.* at pp. 931–932.) The court also instructed the probation officer to inform the minor in advance of forbidden areas. (*Id.* at p. 919.) If the minor disagreed with the officer’s list or map, he could move to modify the condition of probation. (*Ibid.*)

In the instant action, the challenged gang condition already grants the probation officer the discretion to define the particular areas of gang-related activity from which appellant must stay away. It also includes an express knowledge requirement, stating appellant must stay away from locations *he knows* to be areas of gang-related activity. Thus, the condition at issue in this case is much narrower than the one challenged in *Victor L.* Appellant is not required to stay away from any and all areas of gang activity,

only those areas of gang-related activity of which he is aware or areas his probation officer instructs him to avoid. Moreover, there is no indication appellant's probation officer has abused his or her discretion by, for example, instructing appellant to stay away from large swaths of town. We therefore find the condition provides sufficient notice to appellant, and is not overbroad.

Accordingly, we decline to modify the challenged gang condition.

B. *Predisposition and Precommitment Credits*

Both appellant and the Attorney General assert we should remand for proper calculation of appellant's predisposition and precommitment credits. We agree.

“In a juvenile delinquency proceeding, ‘a minor is entitled to credit against his or her maximum term of confinement for the time spent in custody before the disposition hearing.’ ” (*In re A.M.* (2014) 225 Cal.App.4th 1075, 1085.) A minor is also entitled to custody credits for the time following the minor's disposition hearing, but prior to commitment. (*In re J.M.* (2009) 170 Cal.App.4th 1253, 1256.) “ ‘It is the juvenile court's duty to calculate the number of days earned, and the court may not delegate that duty.’ ” (*In re A.M.*, at p. 1085.)

Here, appellant was arrested on June 1, 2014, and the disposition hearing took place on July 10, 2014. He remained in custody throughout that period, totaling 40 days. However, at the July 10 hearing, appellant was only granted 26 days of credit for time served.

After the July 10 hearing, the trial court ordered appellant to participate in and complete the YOTP. The trial court also ordered appellant to be detained in juvenile hall pending delivery to the YOTP. The record does not show when appellant was delivered to YOTP. In any event, appellant is entitled to credits for the time he spent in custody prior to his delivery to the YOTP.

Therefore, we remand so the trial court may recalculate appellant's predisposition and precommitment credits.

III. DISPOSITION

The judgment is affirmed in part and reversed in part. We affirm the challenged probation conditions, but we remand for recalculation of the predisposition and precommitment credits.

Margulies, J.

We concur:

Humes, P.J.

Banke, J.

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